

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ROSS BARTON,

Plaintiff,

v.

CEDCO, INC.; and NEVADA  
DEPARTMENT OF CORRECTIONS,

Defendants.

2:05-CV-01435-PMP-RJJ

O R D E R

Presently before the Court is Defendant Cedco, Inc.'s Motion to Dismiss (Doc. #3), filed on December 13, 2005. Plaintiff Ross Barton filed Plaintiff's Opposition to Defendant's Motion to Dismiss (Doc. #21) on June 14, 2006. Defendant Cedco, Inc. filed Defendant's Reply in Support of its Motion to Dismiss (Doc. #22) on June 26, 2006.

Also before this Court is Plaintiff's Motion for Remand (Doc. #12), filed on January 19, 2006. Defendant Cedco, Inc. filed an Opposition to Plaintiff's Motion for Remand (Doc. #13) on February 8, 2006.

**I. BACKGROUND**

Plaintiff Ross Barton ("Barton") asserts Defendant Cedco, Inc. ("Cedco") employed him in a special work program at the High Desert State Prison, a facility of Defendant Nevada Department of Corrections. (Am. Compl. at 2.) Barton alleges Cedco unlawfully discriminated against him in his employment because of his race. (Am. Compl.)

On July 25, 2005, Barton filed a Complaint in the District Court, Clark County,

1 Nevada. (Notice of Removal [Doc. #1], Ex. A.) In the Complaint, Barton alleged Cedco  
2 violated Nevada Revised Statute 613.330 and federal law by discriminating against him.  
3 (Id.) Nonetheless, Barton exclusively cited to Nevada case law and statutes in the  
4 Complaint. (Id.) Cedco removed the Complaint to this Court based on federal question  
5 jurisdiction. (Notice of Removal at 1.)

6 Barton filed an Objection to Notice of Removal (Doc. #5) on December 19, 2005,  
7 and subsequently filed a Motion to Remand (Doc. #12) on January 19, 2006. In both his  
8 Objection and Motion to Remand, Barton argues that because he is a pro se litigant he  
9 inartfully wrote his Complaint to include a federal claim when he desired to include only  
10 state law claims. Additionally, in the Motion for Remand he moved to file an Amended  
11 Complaint which omitted the federal claims. The Court granted Barton leave to file an  
12 Amended Complaint (Order dated May 31, 2006 [Doc. #18]) and Barton filed it on June 16,  
13 2006 (Am. Compl.). In the Amended Complaint, Barton asserts Cedco and the Nevada  
14 Department of Corrections engaged in unlawful employment practices under Nevada state  
15 law. The Amended Complaint does not contain any claims arising under federal law. (Id.)

16 Cedco opposes remand because it argues this Court may exercise jurisdiction over  
17 Barton's pendent state law claims even though original jurisdiction no longer exists in this  
18 Court.<sup>1</sup> Cedco also moves to dismiss Barton's claims, arguing Barton did not exhaust his  
19 administrative remedies. Barton responds the Court should not dismiss his Amended  
20 Complaint and instead the Court should remand to state court because the Amended

---

21  
22 <sup>1</sup> Cedco also states "Cedco respectfully request [sic] that the Court not render a decision on  
23 Plaintiff's Objection until deciding the Motion to Dismiss. In fact, if the Court grants Cedco's Motion  
24 to Dismiss, Plaintiff's Objection becomes moot." (Opp'n to Pl.'s Mot. for Remand, Ex. A at 2 n.2.)  
25 However, Cedco cites no authority to support its request and the Court will therefore consider the  
26 Motion to Remand first as it involves the threshold question of whether this Court has subject matter  
jurisdiction over Barton's Amended Complaint. See, e.g., Blackburn v. United States, 100 F.3d 1426,  
1436 (9th Cir. 1996) ("Subject matter jurisdiction is a threshold issue . . .").

1 Complaint does not state any claims under federal law and asserts only state law claims.

## 2 **II. MOTION TO REMAND**

3 Removal jurisdiction under 28 U.S.C. § 1441(a) gives federal district courts original  
4 jurisdiction over “any civil action brought in a State court of which the district courts of the  
5 United States have original jurisdiction.” Pursuant to 28 U.S.C. § 1331, federal district  
6 courts have original jurisdiction over “all civil actions arising under the Constitution, laws,  
7 or treaties of the United States.” “A case ‘arises under’ federal law either where federal law  
8 creates the cause of action or ‘where the vindication of a right under state law necessarily  
9 turn[s] on some construction of federal law.’” Republican Party of Guam v. Gutierrez, 277  
10 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting Franchise Tax Bd. v. Constr. Laborers  
11 Vacation Trust, 463 U.S. 1, 8-9 (1983)). “Once a federal court acquires removal  
12 jurisdiction over a case, it also acquires jurisdiction over pendent state claims.” Nishimoto  
13 v. Federman-Bachrach & Assocs., 903 F.2d 709, 715 (9th Cir. 1990) (citing Bright v.  
14 Bechtel Petroleum, Inc., 780 F.2d 766, 771 (9th Cir. 1986)).

15 Whether a district court should retain jurisdiction over pendent state claims when  
16 federal claims no longer exist or remand the state claims to state court is within the court’s  
17 discretion. Id. (citing United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966);  
18 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 349-50 (1988)). In deciding whether to  
19 remand pendent state claims, “a district court should ‘consider and weigh in each case, and  
20 at every stage of the litigation, the values of judicial economy, convenience, fairness, and  
21 comity . . . .’” Id. “[I]n the usual case in which all federal-law claims are eliminated  
22 before trial, the balance of factors . . . will point toward declining to exercise jurisdiction  
23 over the remaining state-law claims.” Acri v. Vatican Assocs., Inc., 114 F.3d 999, 1001  
24 (9th Cir. 1997) (quoting Carnegie-Mellon Univ., 484 U.S. at 350 n.7).

25 In this matter, the balance of factors points towards remanding the case to state court.  
26 This case is in the earliest stage of litigation and thus judicial economy and convenience

1 point towards remand. The Court has not considered any dispositive motions and the only  
2 dispositive motion on file is a motion to dismiss. Additionally, issues of fairness weigh in  
3 favor of remand. Barton originally filed in state court and Barton argues that, as a pro se  
4 litigant, he accidentally pled a federal cause of action in the original Complaint when he  
5 meant to plead only state law claims. Comity to the state court also weighs in favor of  
6 remand because Barton pleads only state law claims in the Amended Complaint. Finally,  
7 because Barton has eliminated all federal claims in his Amended Complaint, the federal law  
8 claims have been eliminated before trial and the balance of factors points towards this  
9 Court's declining to exercise jurisdiction over the remaining state law claims. The Court  
10 therefore will decline to exercise jurisdiction over the Amended Complaint and remand to  
11 state court.

### 12 **III. OTHER PENDING MOTIONS**

13 Because the Court will not exercise jurisdiction over the state law claims, the Court  
14 will deny the other pending motions as moot.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 **IV. CONCLUSION**

2 IT IS THEREFORE ORDERED that Plaintiff's Motion for Remand (Doc. #12) is  
3 hereby GRANTED. This case is hereby REMANDED to the District Court, Clark County,  
4 Nevada.

5 IT IS FURTHER ORDERED that the following pending motions are hereby  
6 DENIED as moot:

- 7 1. Defendant Cedco Inc.'s Motion to Dismiss (Doc. #3);  
8 2. Plaintiff's Motion for Order Compelling Disclosure or Discovery (Doc. #24);  
9 3. Plaintiff's Motion for Enlargement of Time (Doc. #23);  
10 4. Plaintiff's Motion for Enlargement of Time (Doc. #28); and  
11 5. Plaintiff's [Second] Motion for Remand (Doc. #27).

12  
13 DATED: July 24, 2006

14  
15 

16 PHILIP M. PRO  
17 Chief United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26